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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ARBITRATION APPLICATION NO.146 OF 2018

Likproof India Pvt. Ltd.	..Applicant
Vs.	
Shree Naman Developers Ltd.	..Respondent

Mr.Nikhil Patil with Mr.Prabhakar Jadhav for Applicant.
Ms.Preeti Shah for Respondent.

CORAM : G.S. KULKARNI, J.

DATE : 26th FEBRUARY, 2019

P.C.:

This is an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) whereby the applicant prays for appointment of an arbitral tribunal for adjudication of the disputes and differences which are stated to have arisen between the parties under the agreement dated 11 August 2011 titled as “CONTRACT DOCUMENT NAMAN HABITAT (RCC, BLOCK WORK, INTERNAL & EXTERNAL PLASTERING, WATERPROOFING, DOOR FRAME & OTHER MISCELLENEOUS CIVIL WORKS) at Exhibit B read with work orders dated 12 August 2014 and 25 February 2015 (Exhibit C and Exhibit D). The arbitration agreement is contained in clause 1.65 of the said contract which reads thus:-

“1.65 ARBITRATION

Except where otherwise provided in the Contract all questions and disputes, relating to the Contract, concerning the works, or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to arbitration subject to the provisions of the Arbitration and Conciliation Act, 1996 or any Statutory modification or reenactment thereof and the rules made there under and for the time being in force.

1.65.1 APPOINTMENT OF ARBITRATION TRIBUNAL & COST OF PROCEEDINGS

An arbitral tribunal of three arbitrators shall conduct such arbitration. The contractor will appoint one arbitrator and the Employer will appoint one. Both these arbitrators shall be members of the Institution of Engineers (India). The two appointed arbitrators should appoint a third arbitrator who shall act as the presiding arbitrator. The third arbitrator shall be a fellow of the Institution of Engineers (India).

The venue of arbitration shall be Mumbai.”

2. The applicant by its letter dated 29 July 2017 called upon the respondent to refer the disputes and differences for adjudication by appointing an arbitral tribunal. However, as the respondent could not concur, the present application is filed.

3. After this application was heard for sometime, learned Counsel for the parties on instructions are agreeable that the disputes and differences be referred for arbitration of a sole arbitrator. In view of this consensus between the parties, this application can conveniently be disposed of. Hence, the following order:-

ORDER

(i) Mr. Shailesh Shah, Senior Advocate of this Court, is appointed as a prospective sole Arbitrator to arbitrate the disputes and differences between the parties under the agreement dated 11 August 2011 read

with work orders dated 12 August 2014 and 25 February 2015;

(ii) The learned sole prospective arbitrator, fifteen days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application with a copy to be forwarded to both the parties;

(iii) At the first instance, the parties shall appear before the prospective arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

(v) All contentions of the parties on merits of the matter including the arbitrability of the disputes are expressly kept open;

(vi) The above application is disposed of in the above terms. No costs.

(vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

address: Office No 64, 5th Floor, Ali Chambers, Tamrind Lane,
Fountain, Mumbai - 400001

Contact No. 9820000107.

[G.S. KULKARNI, J.]